

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

R.H., an incapacitated minor, by and through her Court Appointed Legal Guardian, JOHN GONZALES, ESQ.	:	
	:	Case No. 2:23-cv-02714
and	:	Judge Edmund A. Sargus
MARIA ESTRADA LOPEZ, Individually,	:	Magistrate Judge
	:	Chelsea A. Vascura
Plaintiffs,	:	
v.	:	
THE UNITED STATES OF AMERICA,	:	
Defendant.	:	

**DEFENDANT THE UNITED STATES OF AMERICA’S
UNOPPOSED MOTION FOR LEAVE TO FILE
AMENDED ANSWER**

Under Fed. R. Civ. P. 15(a), Defendant United States of America moves the Court for leave to amend its Answer to correct an error regarding the date of two prenatal visits in paragraphs 24 and 27. The United States previously advised Plaintiffs of the presence of this error. The undersigned counsel contacted counsel for Plaintiffs, and he provided e-mail consent to file an Amended Answer implementing this correction. The reasons for this motion are more particularly set forth in the accompanying memorandum in support.

(signature follows)

Respectfully submitted,

BRIAN M. BOYTON
Principal Deputy Assistant
Attorney General
Civil Division

JAMES G. TOUHEY, JR.
Director, Torts Branch

CHRISTOPHER BENSON
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s/ Brandon Capece
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Date: August 6, 2024

Counsel for the United States of America

MEMORANDUM IN SUPPORT

The United States hereby moves, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, for leave to amend its Answer to correct an error. The Amended Answer is attached and specifically makes corrections to paragraphs 24 and 27.¹

Fed. R. Civ. P. 15(a) allows a party to amend its pleading before trial “only with the opposing party’s written consent or the court’s leave.” While Plaintiffs have given written consent for the Defendant to amend its Answer to correct certain information, the United States is nonetheless filing this motion because the Court’s preliminary pretrial set April 5, 2024, as the deadline to amend pleadings.

Last month, the United States served its Second Amended Responses to Plaintiffs’ First Set of Requests for Production. As a part of this production, the United States served, to its knowledge, Plaintiff Estrada’s complete 2020 prenatal chart. On June 20, 2024, the parties met for the deposition of Danielle Wadkins, CNP. As discussed off the record prior to the deposition and placed on the record at the start of the deposition, the United States informed Plaintiffs that it had learned of an error in its Answer at paragraph 24. Although paragraph 24 indicated that Plaintiff Estrada presented to PrimaryOne, her prenatal care provider, on July 29, 2020, the July 29 encounter in the medical records represents an “Annotation/Addendum” to the record, not an in-person visit. The fact that Plaintiff Estrada did not present to PrimaryOne on July 29, 2020, is not disputed.

The United States subsequently informed Plaintiffs that it learned of an error in its Answer at paragraph 27. Although paragraph 27 indicated that Plaintiff Estrada presented to PrimaryOne on September 24, 2020, the September 24 encounter in the medical records

¹ The remaining language of Defendant’s Amended Answer remains the same as the originally filed Answer.

represents an “Orders Only” entry to the record, not an in-person visit. The fact that Plaintiff Estrada did not present to PrimaryOne on September 24, 2020, is not disputed.

Rule 15(a) allows a party to amend its answer and leave to amend “shall be freely given when justice so requires.” *Phelps v. McClellan*, 30 F.3d 658, 662 (6th Cir. 1994). Justice requires amendment here because the Court is simply allowing the United States to correct its Answer to reflect uncontested facts. Allowing the United States to file the Amended Answer would serve justice and promote judicial efficiency. Further, there would be no substantial or undue prejudice, bad faith, undue delay, or futility.

For the reasons explained above, the Court should grant leave for filing the attached Amended Answer.

Respectfully submitted this 6th day of August, 2024.

Respectfully submitted,

BRIAN M. BOYTON
Principal Deputy Assistant
Attorney General
Civil Division

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Director, Torts Branch

CHRISTOPHER BENSON
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Counsel for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August 2024, a copy of the foregoing Unopposed Motion for Leave to File Amended Answer was served on counsel of record via the Court's CM/ECF system.

/s/ Brandon Capece
Brandon Capece
Trial Attorney